THE HIGH COURT OF SIKKIM : GANGTOK

WRIT PETITION (C) NO. 9 OF 2003

In the matter of a petition under Article 226 of the Constitution of India.

and

in the matter of

Nilam Ghatani,
S/o Late Chandra Kr. Ghatani,
Laboratory Attender,
Spices Board at Yakthung House,
Tadong, Gangtok
East Sikkim .... **Petitioner**

VERSUS

1. The Spices Board,
Government of India,
Ministry of Commerce and Industry,
Through its Chairman,
Sugandha Bhawan, N.H. By-pass,
P.B. No. 2277, Palarivattom P.O.
Cochin – 682 025.

2. The Secretary,
Spices Board,
Government of India,
Ministry of Commerce,
Sugandha Bhawan,
National Highway, By-pass,
P.B. No. 2277, Palarivattom P.O.
Cochin – 682 025.

3. The Deputy Director (Res),
Spices Board, ICRI, RRS,
Yakthung House, 2nd Floor,
Tadong, P.O. Tadong,
East Sikkim.

4. The Deputy Secretary,
Department of Personnel, Administrative Reforms & Training,
Government of Sikkim,
Gangtok – 737 101,
East Sikkim. .... **Respondents**

For the petitioner : A. Moulik, Advocate.

For the respondents : Messrs S. P. Wangdi, Advocate-General with Karma Thinlay, Assistant Government Advocate.

PRESENT: THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE.
THE HON'BLE SHRI JUSTICE N. SURJAMANI SINGH, JUDGE.

Date of judgment: 21st May, 2004.

J U D G M E N T

R. K. PATRA, C.J.

In this writ petition the petitioner seeks quashing of the memorandum dated 21.3.2003 (annexure 7) by which his services as a Laboratory Attender have been terminated w.e.f. 31.3.2003.

2. The case of the petitioner is that he after passing Class XII examination got his name registered with the Employment Exchange at Gangtok as a non-local unemployed person. The Secretary of the Spices Board (respondent no. 2) in his letter dated 4.6.1997 (annexure 1) requested the Deputy Secretary, Department of Personnel, Administrative Reforms and Training, government of Sikkim, Gangtok (respondent no. 4) to forward list of suitable candidates for filling up three vacancies in the posts of Laboratory Attenders. Requisition was also sent to the local Employment Exchange indicating the above vacancy position and to sponsor suitable candidates. On receipt of the letter (annexure 1) the state government forwarded a list of candidates including the petitioner to the appropriate authority. The Assistant Director (Per) of the Spices Board

in memorandum dated 16.9.1997 (annexure 2) directed the petitioner to appear for a test/interview for the post of Laboratory Attender on 14.10.1997. Accordingly he appeared in the interview and having been found qualified, was appointed as per memorandum dated 31.10.1997 (annexure 3) as a Laboratory Attender in the Spices Board in the scale of pay of Rs.775-12-955-EB-14-1025 (pre-revised). He joined the post in the Office of Deputy Director (Res), Spices Board on 13.11.1997. In paragraph 2(i) of the appointment order, it was mentioned that the post was temporary and the appointee would be on probation for two years from the date of his joining. On 13.11.1999 he completed the probationary period of two years. While the matter stood thus, the petitioner received memorandum dated 11.11.1999 (annexure 4) intimating to him that his temporary appointment as Laboratory Attender was against a vacancy resulting from promotion made under the DBT project "Tissue Culture Large-Cardamom Product Plan" upto 31.3.2001 and as such his appointment was upto 31.3.2001. On receipt of the above memorandum the petitioner submitted a representation on 30.11.1999 to the Secretary, Spices Board (respondent no. 2) urging that his appointment was not in any project nor was it upto 31.3.2001. When he protested at the above terms and conditions by making another representation, he was again informed that his appointment was under the aforesaid

project and his services would stand terminated w.e.f. 31.3.2001. He continued in the post even after March 2001 but he was shocked to receive the impugned order.

3. The contesting respondents have filed their counter-affidavit. Their case is that the petitioner and Birendra Dangal (petitioner in writ petition no. 8 of 2003) were the two candidates selected for appointment as Laboratory Attenders. The third vacancy could not be filled up in the first instance due to non-availability of suitable candidates. Therefore it was again advertised. Having regard to the economy considerations the said vacancy (third) was eventually not filled up. By sheer inadvertence and oversight the actual position with regard to the nature of the posts of Laboratory Attenders was not mentioned in the letter (annexure 1) and requisition as well as in the appointment order (annexure 3). Three vacancies in the posts of Laboratory Attenders arose due to temporary promotion of Laboratory Attenders as Junior Technical Assistants under the DBT project "Tissue Culture Large-Cardamom Product Plan" sanctioned by the Department of Bio-Technology of the Ministry of Science and Technology, Government of India. The period of the project as sanctioned by the Ministry was for five years ending on 31.3.2001. When the period of the project was to expire on 31.3.2001, the two Laboratory Attenders who were promoted as Junior Technical Assistants were liable to be reverted as

Laboratory Attenders on 31.3.2001. The tenure of the project was further extended from 1.4.2001 till 31.3.2003. Ultimately, with the final expiry of the period the Laboratory Attenders who were promoted as Junior Technical Assistants were to be reverted as Laboratory Attenders and therefore the service of the petitioner was to be brought to an end.

4. The short question that arises for consideration is whether the appointment of the petitioner was against a substantive post in the regular establishment or was it under the DBT project "Tissue Culture Large-Cardamom Product Plan". Admittedly in the letter written to the Deputy Secretary (annexure 1) and in the requisition sent to the Employment Exchange there was no indication about the nature of posts of Laboratory Attenders. Even in the appointment order issued to the petitioner there was no mention that his appointment was in any project. On the contrary it was indicated therein that the post of Laboratory Attender was a temporary one and the appointee would be on probation for a period of two years from the date of his joining the post. The stand of the Spices Board is that by mistake and through inadvertence the actual position with regard to the nature of post of Laboratory Attenders was not stated in any of the above documents.

Can it be said that the stand taken by the contesting respondents in the counter-affidavit that the appointment of

the petitioner was in the project is an after-thought? From the materials as available on record we cannot hold that the plea of the Spices Board is an after-thought or a false one. This is quite evident from the memorandum issued as back as on 11.11.1999 (annexure 4) wherein it was clearly brought out that the appointment of the petitioner as Laboratory Attender was against a vacancy resulting from promotion made under the DBT project "Tissue Culture Large-Cardamom Product Plan". By this time there was no cloud of litigation hovering around the parties. The above project which was upto 31.3.2001 later came to be extended for a further period of two years, i.e., upto 31.3.2003. The vacancies arose consequent upon temporary promotion of three of the regular Laboratory Attenders as Junior Technical Assistants under the aforesaid project. With the closure of the project those temporary promotees were liable to be reverted to their substantive posts of Laboratory Attenders. Therefore the petitioner who was temporarily appointed in the temporary vacancy of Laboratory Attender had to face retrenchment. The appointment of the petitioner as Laboratory Attender was co-terminus with the tenure of the project. With the closure of the project the service of the petitioner had to be brought to an end. In these circumstances, we do not find any illegality in the impugned order.

5. During the pendency of the writ petition, we wanted to know as to whether any scheme has been made by the Spices Board to accommodate the retrenched personnel like the petitioner. The Secretary of the Spices Board in letter dated 16.4.2004 informed this Court that no such scheme has been made. In the said letter, it was stated that there is no vacancy at present to absorb the petitioner against any regular post. We may note that petitioner served the Spices Board for about six years and in the meantime he has become over-aged for any other employment. We therefore direct the contesting respondents to consider first the case of the petitioner for appointment in the event vacancy arises in any post in the category of Group D in the near future not as a fresh candidate but as a retrenched hand.

6. In the result, the writ petition is dismissed being devoid of merit. There shall be no order as to costs.

(R. K. Patra)
Chief Justice
21.05.2004

I agree.

(N. Surjamani Singh)
Judge
21.05.2004

Dictation taken
&
typed by me
Dipak Saha